

Hon. Robert Brutinel, Chair
Committee on the Impact of Wireless Mobile Technologies
and Social Media on Court Proceedings
1501 W. Washington St., Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT RULE 122.1,)	
RULES OF THE SUPREME COURT)	Supreme Court No. R-13-0013
)	
)	AMENDED PETITION
)	
)	
)	
_____)	

Petitioner respectfully files this amended petition, as provided by the Court's Order establishing a modified comment period. The appendix contains proposed text of Supreme Court Rule 122.1 in two versions: (1) a "mark-up" showing changes the Wireless Committee made to the version submitted with the original rule petition, and (2) a "clean" version of Rule 122.1 as now proposed.

I. Summary of comments received during the initial comment period.

The State Bar of Arizona filed the sole comment during the initial comment period. After the initial comment period closed, the Wireless Committee held a public meeting. In the course of considering the State Bar's comments, the Wireless

Committee discussed additional ways to clarify and to streamline the text of the proposed rule, and to integrate proposed Rule 122.1 governing the use of portable electronic devices in the courthouse with its companion, Supreme Court Rule 122, regarding the use of recording devices in the courtroom. Please see the Amended Petition in R-13-0012 for a discussion of the relationship between these two rules.

II. Changes to specific sections of Rule 122.1. Proposed Supreme Court Rule 122.1 as filed with the January rule petition consisted of six sections. The modified version of Rule 122.1 in the appendix also contains six sections, although there have been revisions to each section.

Section (a): Purpose. The first sentence of this section formerly began, “This rule describes permissible uses....” A revised sentence now includes the converse as well. This sentence states, “This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse.”

Two sentences that were formerly contained in section (c) were modified and moved to section (a). One sentence requires the court to use reasonable means to advise courthouse visitors of the provisions of this rule. Moving this sentence to section (a) recognizes that the provision applies to multiple sections of the rule rather than only one.

The other sentence concerns contempt, and it was moved to section (a) because it also applies to multiple sections of Rule 122.1. The former sentence

stated, “A violation of this section presumptively obstructs the administration of justice, and lessens the dignity and authority of the court.” The Wireless Committee used this phrasing in its original version as an indirect reference to contempt. The State Bar’s comment suggested use of a direct reference. The modified sentence now says, “A violation of this rule may be punishable as contempt.”

Section (b): Definitions. This section previously defined three terms: “portable electronic device,” “courthouse,” and “courtroom.” The definition of “courtroom” was moved to Rule 122 because that word is in the title of, and is integral to, Rule 122. In exchange, Rule 122.1(b) added this provision: “This rule incorporates other definitions found in Supreme Court Rule 122(b).” Therefore, “courtroom” and several other terms defined in Rule 122 are now applicable by reference to Rule 122.1.

Section (c): Photography and audio or video recording. Section (c) formerly began with the phrase, “The following restrictions apply to photography....” The modified sentence still mentions restrictions, but now refers to permitted use as well, and says, “Photography, audio recording, and video recording in a courthouse are permitted, but the following restrictions apply....”

Of the three general categories of restrictions that follow, the one discussed most extensively by the Wireless Committee concerned photos and recordings of

individuals outside a courtroom. The State Bar commented that the language of this section as originally proposed by the Wireless Committee was both under-inclusive and over-inclusive, that it should only apply to victims and jurors, and that members of the public have no expectation of privacy in a courthouse. The Wireless Committee disagreed. First, enforcement of the prohibition proposed by the State Bar would require proof that the person knew that he or she was taking a photo of a victim or juror, a burden that could be exceedingly difficult to meet. Second, the Wireless Committee believes that no individual should be the subject of a recording or photograph in the courthouse taken without the individual's consent. Accordingly, the modified provision provides, "In areas of a courthouse other than courtrooms, no one may photograph or record an individual without that individual's express consent."

The third restriction in section (c), which allows adoption by local administrative orders of further limitations on recording in the courthouse, includes a new word, "reasonable," and a new phrase, "not inconsistent with this rule or with Rule 122." The Wireless Committee intended these additions to express its philosophy against blanket prohibitions of camera use by local administrative orders. The applicable sentence now says, "...a court may adopt further reasonable limits on photography and audio or video recording in a courthouse that are not inconsistent with this rule or with Rule 122."

Section (d): Jurors and witnesses. The State Bar’s comment suggested that the provisions of section (d) should apply to prospective as well as to empanelled jurors. The Wireless Committee agreed, and it made an appropriate revision.

The Wireless Committee also discussed the State Bar’s concern that the provisions of this section, which require jurors to turn off their devices while in the courtroom and during deliberations, is an “overreach,” and that silencing the devices should be sufficient. The Wireless Committee disagreed. It believes that jurors should focus on trial proceedings and jury deliberations and give them their undivided attention without potential electronic interruptions. However, the Wireless Committee agreed to add a sentence to section (d) that allows jurors to use devices during their free time. The sentence states, “Jurors may use their devices for allowable purposes during breaks.” There is a corresponding deletion of a sentence in the previous version that would have required the court to provide a phone number for emergency messages to jurors.

The Wireless Committee’s updated version of Rule 122.1 also includes two subsection headings for section (d), one for “jurors” and the other for “witnesses.”

Section (e): Attorneys, parties, and members of the public. The current version of this section also has new subsection headings: “allowed uses,” “prohibited uses,” and “use of a personal audio recorder.” The State Bar’s

comment noted that the Wireless Committee omitted a provision concerning use of a personal audio recorder, and that provision is now included in the third subsection.

The version of Rule 122.1 filed with the original rule petition allowed a judge to “prohibit” activity under section (e). Wireless Committee members had agreed at their November 7, 2012 meeting that the rule should allow a judge to “terminate” activity rather than “prohibit” activity, but inadvertently, the filed version overlooked the verb substitution. The members in April 2013 continued to express their preference for the word “terminate,” and the operative word in the attached version is “terminate.”

Section (f): Use of a portable electronic device outside the courtroom; limitations. The current version adds the word “limitations” to the title of this section. It also makes syntactical changes to the section’s text.

III. Conclusion. The Wireless Committee appreciates the work of the State Bar in providing comments and suggestions for improving the proposed new rule. The Wireless Committee has attempted to address the matters raised by the State Bar, and it now submits its revisions to Rule 122.1 in the appendix to this amended petition.

RESPECTFULLY SUBMITTED this 7th day of May 2013

By /s/ _____
Hon. Robert Brutinel, Chair
Committee on the Impact of Wireless Mobile
Technologies and Social Media on Court
Proceedings
1501 W. Washington Street
Phoenix, AZ 85007

Mark-up of the version filed with the original rule petition: deleted text has ~~striketrough~~; new text has underline

Rule 122.1: Use of a portable electronic devices in a courthouse [New]

a. Purpose. This rule ~~describes permissible~~ specifies the permitted and prohibited uses of portable electronic devices in a courthouse ~~and in a courtroom by attorneys, parties, witnesses, jurors, and members of the public.~~ A court must use reasonable means to advise courthouse visitors of the provisions of this rule. A violation of this rule may be punishable as contempt.

b. Definitions. The following definitions apply in this rule:

(1.) A “*portable electronic device*” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

(2.) A “*courthouse*” includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court.

(3.) ~~A “*courtroom*” is an area of a courthouse or other building where a judge or other judicial officer conducts judicial proceedings.~~ *Other Definitions:* This rule incorporates other definitions found in Supreme Court Rule 122(b).

c. Photography and audio or video recording. Photography, audio recording, and video recording in a courthouse are permitted, but the following restrictions apply:

(1) In a courtroom: In a courtroom, no one may use a portable electronic device ~~for to take~~ to take photographs or for audio or video recording ~~in a courtroom, unless that use was approved by the judge conducting a proceeding in that courtroom, or is otherwise~~ is allowed under Rule 122.

(2) Outside a courtroom: In areas of a courthouse other than courtrooms, no one may photograph or record an individual without that individual's express consent.

(3) Local orders: By local administrative order, a court may ~~prohibit or limit~~ adopt further limits on photography and audio or video recording in ~~other areas of a courthouse.~~ A party or a member of the public may not knowingly photograph or record another person anywhere in the courthouse without the person's consent. A violation of this section presumptively obstructs the administration of justice, and lessens the dignity and authority of the court. A court must use reasonable means to advise the public and court participants of prohibitions under a courthouse that are not inconsistent with this section rule or with Rule 122.

d. Jurors and witnesses. ~~A juror may not~~ The following restrictions apply to use a of portable electronic devices by jurors, including prospective jurors, and by witnesses.

(1) Jurors: Jurors must turn off their portable electronic devices while present in a courtroom ~~during a trial, or, and while present~~ in a jury room during the jury's deliberations and discussions concerning a case. ~~, and jurors must turn off their portable electronic devices while in those locations at those times. When a jury is deliberating, the court must provide jurors with a court telephone number at which an emergency message may be left for a juror. While in a courtroom, a witness, a~~ Jurors may use their devices for allowable purposes during breaks.

(2) Witnesses: A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.

e. Attorneys, parties, and members of the public. ~~Any person, other than a juror or a witness,~~ The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this section is subject to the authority of a judge to terminate activity that may be disruptive or distracting to a court proceeding, or that may otherwise be contrary to the administration of justice.

(1) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information, to access the internet, and to send and receive text messages or information.

(2) Prohibited uses: A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for other audible functions while court is in session, and attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. ~~Any allowed use of a portable electronic device is subject to the authority of a judge to prohibit activity that may be disruptive or distracting to a court proceeding, or that may otherwise be contrary to the administration of justice.~~

(3) Use of a personal audio recorder: Attorneys, parties, and members of the public may use a personal audio recorder in a courtroom only as provided by Rule 122.

f. Use of a portable electronic device outside a courtroom; limitations. Except as provided in sections (c), (d) and (e) of this rule, ~~any~~ a person may use a portable electronic device ~~within in~~ in a courthouse ~~and outside of a courtroom~~, subject to the authority of judges, court administrators, or court security officers to limit or terminate activity that may be disruptive to court operations or that may compromise courthouse security.

Rule 122.1: Use of portable electronic devices in a courthouse [New]

a. Purpose. This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. A violation of this rule may be punishable as contempt.

b. Definitions. The following definitions apply in this rule:

(1) A “*portable electronic device*” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

(2) A “*courthouse*” includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court.

(3) *Other definitions:* This rule incorporates other definitions found in Supreme Court Rule 122(b).

c. Photography and audio or video recording. Photography, audio recording, and video recording in a courthouse are permitted, but the following restrictions apply:

(1) *In a courtroom:* In a courtroom, no one may use a portable electronic device to take photographs or for audio or video recording unless that use is allowed under Rule 122.

(2) *Outside a courtroom:* In areas of a courthouse other than courtrooms, no one may photograph or record an individual without that individual’s express consent.

(3) *Local orders:* By local administrative order, a court may adopt further reasonable limits on photography and audio or video recording in a courthouse that are not inconsistent with this rule or with Rule 122.

d. Jurors and witnesses. The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.

(1) *Jurors:* Jurors must turn off their portable electronic devices while present in a courtroom and while present in a jury room during the jury's deliberations and discussions concerning a case. Jurors may use their devices for allowable purposes during breaks.

(2) *Witnesses:* A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.

e. Attorneys, parties, and members of the public. The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this section is subject to the authority of a judge to terminate activity that may be disruptive or distracting to a court proceeding, or that may otherwise be contrary to the administration of justice.

(1) *Allowed uses:* Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information, to access the internet, and to send and receive text messages or information.

(2) *Prohibited uses.* A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for other audible functions while court is in session, and attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom.

(3) *Use of a personal audio recorder:* Attorneys, parties, and members of the public may use a personal audio recorder in a courtroom only as provided by Rule 122.

f. Use of a portable electronic device outside a courtroom; limitations. Except as provided in sections (c), (d) and (e) of this rule, a person may use a portable electronic device in a courthouse, subject to the authority of judges, court administrators, or court security officers to limit or terminate activity that may be disruptive to court operations or that may compromise courthouse security.